

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:18-cv-00047-CKK**

ANIMAL WELFARE INSTITUTE v. NATIONAL OCEANIC
AND ATMOSPHERIC ADMINISTRATION et al

Assigned to: Judge Colleen Kollar-Kotelly

Case: 1:18-cv-02750-DLF

Cause: 05:552 Freedom of Information Act

Plaintiff

ANIMAL WELFARE INSTITUTE

Date Filed: 01/09/2018

Jury Demand: None

Nature of Suit: 895 Freedom of
Information Act

Jurisdiction: U.S. Government Defendant

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V.

Defendant

**NATIONAL OCEANIC AND
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Defendant

**NATIONAL MARINE FISHERIES
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Date Filed	#	Docket Text
01/09/2018	<u>1</u>	COMPLAINT against ALL DEFENDANTS (Filing fee \$ 400 receipt number 0090-5279322) filed by ANIMAL WELFARE INSTITUTE. (Attachments: # <u>1</u> Exhibit 1, Declaration of Donald C. Baur, # <u>2</u> Civil Cover Sheet, # <u>3</u> Summons (NMFS), # <u>4</u> Summons (NOAA), # <u>5</u> Summons, # <u>6</u> Summons)(Baur, Donald) (Entered: 01/09/2018)
01/09/2018	<u>2</u>	Corporate Disclosure Statement by ANIMAL WELFARE INSTITUTE. (Baur, Donald) (Entered: 01/09/2018)
01/09/2018	<u>3</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Sunny Tsou, :Firm- Perkins Coie LLP, :Address- 505 Howard Street, Suite 1000, San Francisco CA 94105. Phone No. - 415.344.7023. Fax No. - 415.344.7050 Filing fee \$ 100, receipt number 0090-5279409. Fee Status: Fee Paid. by ANIMAL WELFARE INSTITUTE (Attachments: # <u>1</u> Declaration of Sunny Tsou, # <u>2</u> Text of Proposed Order)(Baur, Donald) (Entered: 01/09/2018)
01/09/2018		Case Assigned to Judge Colleen Kollar-Kotelly. (zmd) (Entered: 01/10/2018)
01/10/2018	<u>4</u>	SUMMONS (4) Issued Electronically as to NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. Attorney and U.S. Attorney General (Attachments: # <u>1</u> Notice and Consent) (zmd) (Entered: 01/10/2018)
01/10/2018		MINUTE ORDER GRANTING <u>3</u> Motion for Leave to Appear Pro Hac Vice of Attorney Sunny Tsou, in order for him to appear as co-counsel for Plaintiff, contingent on said attorney filing a declaration certifying familiarity with this Court's Local Rules by no later than JANUARY 17, 2018. Counsel shall promptly register for this Court's CM/ECF system. Signed by Judge Colleen Kollar-Kotelly on 1/10/2018. (lcckk3) (Entered: 01/10/2018)
01/10/2018	<u>5</u>	ORDER ESTABLISHING PROCEDURES FOR CASES ASSIGNED TO JUDGE COLLEEN KOLLAR-KOTELLY. Signed by Judge Colleen Kollar-Kotelly on 1/10/18. (DM) (Entered: 01/10/2018)

01/23/2018	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 1/12/18. Modified event on 1/24/2018 (znmw). (Entered: 01/23/2018)
01/23/2018	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION served on 1/12/2018 (Baur, Donald) (Entered: 01/23/2018)
01/23/2018	<u>8</u>	AFFIDAVIT (<i>amended</i>) of Sunny Tsou in support of motion to Appear Pro Hac Vice by ANIMAL WELFARE INSTITUTE. (Baur, Donald) (Entered: 01/23/2018)
01/29/2018	<u>9</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. NATIONAL MARINE FISHERIES SERVICE served on 1/16/2018 (Baur, Donald) (Entered: 01/29/2018)
02/08/2018	<u>10</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 1/11/2018. Answer due for ALL FEDERAL DEFENDANTS by 2/10/2018. (Baur, Donald) (Entered: 02/08/2018)
02/12/2018	<u>11</u>	ANSWER to <u>1</u> Complaint, by NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.(Haynes, Fred) (Entered: 02/12/2018)
02/13/2018	<u>12</u>	ORDER. The parties shall MEET AND CONFER and file a Joint Status Report by no later than MARCH 13, 2018. Signed by Judge Colleen Kollar-Kotelly on 2/13/2018. (lcckk3) (Entered: 02/13/2018)
02/13/2018		Set/Reset Deadlines: Joint Status Report due by 3/13/2018. (dot) (Entered: 02/14/2018)
02/14/2018	<u>13</u>	NOTICE of Appearance by Albert M. Ferlo, Jr on behalf of ANIMAL WELFARE INSTITUTE (Ferlo, Albert) (Entered: 02/14/2018)
03/12/2018	<u>14</u>	Joint STATUS REPORT by ANIMAL WELFARE INSTITUTE. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order)(Ferlo, Albert) (Entered: 03/12/2018)
03/13/2018	<u>15</u>	ORDER: The parties will continue to discuss issues relating to this case and attempt resolution of such issues without litigation. A Joint Status Report is due by 4/3/2018. Signed by Judge Colleen Kollar-Kotelly on 03/13/18. (DM) (Entered: 03/13/2018)
04/03/2018	<u>16</u>	Joint STATUS REPORT by ANIMAL WELFARE INSTITUTE. (Attachments: # <u>1</u> Text of Proposed Order)(Ferlo, Albert) (Entered: 04/03/2018)
04/03/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>16</u> Joint Status Report. The parties represent that they are meeting and conferring to narrow the issues in this case so that further litigation will not be necessary. They request an additional 21 days to do so. The Court ORDERS the parties to file a further Joint Status Report by no later than APRIL 24, 2018, updating the Court on the status of their discussions and whether any further litigation will be necessary. Signed by Judge Colleen Kollar-Kotelly on 4/3/2018. (lcckk3) (Entered: 04/03/2018)
04/04/2018		Set/Reset Deadlines: Joint Status Report due by 4/24/2018. (kt) (Entered: 04/04/2018)
04/24/2018	<u>17</u>	Joint STATUS REPORT by ANIMAL WELFARE INSTITUTE. (Attachments: # <u>1</u> Text of Proposed Order)(Ferlo, Albert) (Entered: 04/24/2018)
04/25/2018	<u>18</u>	SCHEDULING AND PROCEDURES ORDER. Signed by Judge Colleen Kollar-Kotelly on 4/25/2018. (lcckk3) (Entered: 04/25/2018)
04/25/2018		Set/Reset Deadlines: Plaintiff's Cross Motion due by 8/9/2018. Response to Cross Motion due by 9/10/2018. Reply to Cross Motion due by 10/10/2018. Defendants' Summary Judgment Motion due by 7/9/2018. Response to Motion for Summary Judgment due by 8/9/2018. Reply to Motion for Summary Judgment due by 9/10/2018. (dot) (Entered: 04/25/2018)
07/09/2018	<u>19</u>	Consent MOTION for Extension of Time to File <i>Defendants' Motion for Summary Judgment</i> by NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (Haynes, Fred) (Entered: 07/09/2018)

07/10/2018		MINUTE ORDER. The Court is in receipt of Defendants' <u>19</u> Consent Motion for an Extension of Time to File Defendants' Motion for Summary Judgment. Defendants request an extension of time to file their summary judgment motion because they need additional time to prepare an agency declaration and because defense counsel is busy with other matters. This is the first request for an extension of this deadline and Plaintiff consents. Defendants' Consent Motion is GRANTED NUNC PRO TUNC. Defendants shall file their Motion for Summary Judgment by JULY 19, 2018. Plaintiff shall file its response to that Motion and Plaintiff's Cross-Motion for Summary Judgment by AUGUST 20, 2018. Defendants shall file their Opposition to Plaintiff's Cross-Motion and their Reply in support of their own Motion by SEPTEMBER 20, 2018. Plaintiff shall file its Reply in support of its Cross-Motion by OCTOBER 22, 2018. Finally, the Court notes that Defendants' Motion for an Extension was not filed in a timely manner. The Order Establishing Procedures in this case states that "[m]otions for extensions of time must be filed at least four (4) business days prior to the first affected deadline." ECF No. 5 at 3. The Court expects all future motions to be filed on time. Signed by Judge Colleen Kollar-Kotelly on 7/10/2018. (lcckk3) (Entered: 07/10/2018)
07/10/2018		Set/Reset Deadlines: Defendants shall file their Motion for Summary Judgment by 7/19/2018; Plaintiff shall file its response to that Motion and Plaintiff's Cross-Motion for Summary Judgment by 8/20/2018; Defendants shall file their Opposition to Plaintiff's Cross-Motion and their Reply in support of their own Motion by 9/20/2018; Plaintiff shall file its Reply in support of its Cross-Motion by 10/22/2018. (kt) (Entered: 07/10/2018)
07/19/2018	<u>20</u>	MOTION for Summary Judgment by NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (Attachments: # <u>1</u> Exhibit A – Declaration of Mark H. Graff, # <u>2</u> Exhibit B – Vaughn Index Cover Sheet, # <u>3</u> Exhibit C – Vauhn Index)(Haynes, Fred) (Entered: 07/19/2018)
08/08/2018	<u>21</u>	Consent MOTION for Extension of Time to File Response/Reply to <i>Defendants' Motion for Summary Judgment</i> by ANIMAL WELFARE INSTITUTE (Attachments: # <u>1</u> Text of Proposed Order)(Ferlo, Albert) (Entered: 08/08/2018)
08/08/2018		MINUTE ORDER. The Court is in receipt of Plaintiff's <u>21</u> Consent Motion for Extension of Time. Plaintiff requests an extension of time to file its Opposition to Defendant's Motion for Summary Judgment and its Cross-Motion for Summary Judgment because the facts and legal issues are numerous and complex, because Plaintiff's counsel is busy with other matters, and because Plaintiff's counsel and certain declarants will be out of the office on leave. This is the second request for an extension of this briefing schedule, but this is the first request from Plaintiff. Defendants consent. Plaintiff's Motion is GRANTED. Plaintiff shall file its Opposition to Defendant's Motion for Summary Judgment and its Cross-Motion for Summary Judgment by no later than SEPTEMBER 4, 2018. Defendants shall file their Reply in Support of their Motion for Summary Judgment and their Opposition to Plaintiff's Cross-Motion for Summary Judgment by no later than OCTOBER 5, 2018. Plaintiff shall file its Reply in Support of its Cross-Motion for Summary Judgment by no later than NOVEMBER 5, 2018. Signed by Judge Colleen Kollar-Kotelly on 8/8/2018. (lcckk3) (Entered: 08/08/2018)
08/08/2018		Set/Reset Deadlines: Plaintiff's Cross Motion due by 9/4/2018. Response to Cross Motion due by 10/5/2018. Reply to Cross Motion due by 11/5/2018. Plaintiff's Response to <u>20</u> Motion for Summary Judgment due by 9/4/2018. Reply to Motion for Summary Judgment due by 10/5/2018. (dot) (Entered: 08/10/2018)
09/04/2018	<u>22</u>	RESPONSE re <u>20</u> MOTION for Summary Judgment filed by ANIMAL WELFARE INSTITUTE. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Facts, # <u>3</u> Text of Proposed Order)(Ferlo, Albert) (Entered: 09/04/2018)
09/04/2018	<u>23</u>	Cross MOTION for Summary Judgment by ANIMAL WELFARE INSTITUTE (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Facts, # <u>3</u> Text of Proposed Order)(Ferlo, Albert) (Entered: 09/04/2018)
09/04/2018	<u>24</u>	AFFIDAVIT (Declaration of Jared Goodman) re <u>23</u> Cross MOTION for Summary Judgment , <u>22</u> Response to motion , by ANIMAL WELFARE INSTITUTE. (Ferlo, Albert) Modified text on 9/5/2018 (ztd). (Entered: 09/04/2018)

09/04/2018	<u>25</u>	AFFIDAVIT (Declaration of Heather Rally) re <u>23</u> Cross MOTION for Summary Judgment , <u>22</u> Response to motion , by ANIMAL WELFARE INSTITUTE. (Ferlo, Albert) Modified text on 9/5/2018 (ztd). (Entered: 09/04/2018)
09/04/2018	<u>26</u>	AFFIDAVIT (Declaration of Georgia Hancock) re <u>23</u> Cross MOTION for Summary Judgment , <u>22</u> Response to motion by ANIMAL WELFARE INSTITUTE. (Attachments: # <u>1</u> Exhibit 1 through 14)(Ferlo, Albert) Modified on 9/5/2018 (ztd). (Entered: 09/04/2018)
09/04/2018	<u>27</u>	AFFIDAVIT (Declaration of Naomi Rose) re <u>23</u> Cross MOTION for Summary Judgment , <u>22</u> Response to motion , of <i>Naomi Rose</i> by ANIMAL WELFARE INSTITUTE. (Attachments: # <u>1</u> Exhibit 1 through 15, # <u>2</u> Exhibit 16 through 21)(Ferlo, Albert) Modified text on 9/5/2018 (ztd). (Entered: 09/04/2018)
09/04/2018	<u>28</u>	AFFIDAVIT (Declaration of Donald C. Baur) re <u>22</u> Response to motion, <u>23</u> Cross MOTION for Summary Judgment , by ANIMAL WELFARE INSTITUTE. (Attachments: # <u>1</u> Exhibit 1 through 10, # <u>2</u> Exhibit 11 through 18, # <u>3</u> Exhibit 19 through 20, # <u>4</u> Exhibit 21 through 29, # <u>5</u> Exhibit 30 through 35, # <u>6</u> Exhibit 36 through 46)(Ferlo, Albert) Modified text on 9/5/2018 (ztd). (Entered: 09/04/2018)
09/28/2018	<u>29</u>	Consent MOTION for Extension of Time to File <i>Defendants' Reply Memorandum in Support of Their Motion for Summary Judgment and Their Opposition to Plaintiff's Cross-Motion for Summary Judgment</i> by NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (Haynes, Fred) Modified relief on 10/1/2018 (ztd). (Entered: 09/28/2018)
10/01/2018		MINUTE ORDER. The Court is in receipt of Defendant's <u>29</u> Consent Motion for Extension of Time to File Defendant's Reply Memorandum in Support of Their Motion for Summary Judgment and Defendants' Opposition to Plaintiff's Cross-Motion for Summary Judgment. Defendants' reply memorandum in support of its motion for summary judgment and its opposition to Plaintiff's cross-motion are currently due October 5, 2018. Defendant seeks an extension of time due to unanticipated emergency litigation which has required defense counsel's attention. Defendants' <u>29</u> motion is GRANTED. Defendants shall file their Reply in Support of their Motion for Summary Judgment and their Opposition to Plaintiff's Cross-Motion for Summary Judgment by no later than OCTOBER 15, 2018. Plaintiff shall file its Reply in Support of its Cross-Motion for Summary Judgment by no later than NOVEMBER 15, 2018. Signed by Judge Colleen Kollar-Kotelly on 10/1/2018. (lcckk3) (Entered: 10/01/2018)
10/01/2018		Set/Reset Deadlines: Defendants shall file their Reply in Support of their Motion for Summary Judgment and their Opposition to Plaintiff's Cross-Motion for Summary Judgment by no later than 10/15/2018; Plaintiff shall file its Reply in Support of its Cross-Motion for Summary Judgment by no later than 11/15/2018. (kt) (Entered: 10/01/2018)
10/15/2018	<u>30</u>	Memorandum in opposition to re <u>23</u> Cross MOTION for Summary Judgment by <i>Plaintiff</i> filed by NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION. (Attachments: # <u>1</u> Exhibit A – O'Brien Declaration, # <u>2</u> Exhibit B – Response to Plaintiff's Statement of Additional Material Facts as to Which There Is No Genuine Dispute)(Haynes, Fred) (Entered: 10/15/2018)
10/15/2018	<u>31</u>	REPLY to opposition to motion re <u>20</u> MOTION for Summary Judgment filed by NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION. (Haynes, Fred) (Entered: 10/15/2018)
11/15/2018	<u>32</u>	NOTICE of Appearance by Bradley Howard Oliphant on behalf of ANIMAL WELFARE INSTITUTE (Oliphant, Bradley) (Entered: 11/15/2018)
11/15/2018	<u>33</u>	REPLY to opposition to motion re <u>23</u> Cross MOTION for Summary Judgment filed by ANIMAL WELFARE INSTITUTE. (Oliphant, Bradley) (Entered: 11/15/2018)
02/28/2019	<u>34</u>	ORDER granting <u>20</u> Motion for Summary Judgment; denying <u>22</u> Motion for Summary Judgment. Signed by Judge Colleen Kollar-Kotelly on 2/28/2019. (lcckk3) (Entered: 02/28/2019)

02/28/2019	<u>35</u>	MEMORANDUM OPINION. Signed by Judge Colleen Kollar-Kotelly on 2/28/2019. (lcckk3) (Entered: 02/28/2019)
02/28/2019		Set/Reset Deadlines: Joint Status Report due by 3/29/2019, informing the Court as to whether or not judicial action is requested on Defendants withholding of the 34 records related to the draft memorandum. (dot) (Entered: 02/28/2019)
03/27/2019	<u>36</u>	Joint STATUS REPORT by ANIMAL WELFARE INSTITUTE. (Attachments: # <u>1</u> Text of Proposed Order)(Oliphant, Bradley) (Entered: 03/27/2019)
03/27/2019		MINUTE ORDER. The Court is in receipt of the parties' <u>36</u> Joint Status Report. Plaintiff reports that, out of the 34 records related to the draft memorandum, one record is allegedly being wrongfully withheld. The parties are conferring regarding whether or not judicial action is required as to this record. The parties request an additional 28 days to further discuss and seek resolution of this document. The Court ORDERS the parties to file another Joint Status Report by APRIL 26, 2019, informing the Court as to whether the parties seek additional judicial action or request an entry of final judgment in this litigation. Signed by Judge Colleen Kollar-Kotelly on 3/27/2019. (lcckk3) (Entered: 03/27/2019)
03/27/2019		Set/Reset Deadlines: Joint Status Report due by 4/26/2019, informing the Court as to whether the parties seek additional judicial action or request an entry of final judgment in this litigation. (dot) (Entered: 03/28/2019)
04/26/2019	<u>37</u>	Joint STATUS REPORT by ANIMAL WELFARE INSTITUTE. (Attachments: # <u>1</u> Text of Proposed Order)(Oliphant, Bradley) (Entered: 04/26/2019)
04/26/2019		MINUTE ORDER. The Court is in receipt of the parties' <u>37</u> Joint Status Report. Plaintiff reports that, out of the 34 records related to the draft memorandum, there remains a dispute as to only one record. The parties are conferring regarding whether or not judicial action is required as to this record. The parties request an additional 21 days to further discuss and seek resolution of this document. The Court ORDERS the parties to file another Joint Status Report by MAY 17, 2019, informing the Court as to whether the parties seek additional judicial action or request an entry of final judgment in this litigation. Signed by Judge Colleen Kollar-Kotelly on 4/26/2019. (lcckk3) (Entered: 04/26/2019)
04/26/2019		Set/Reset Deadlines: Joint Status Report due by 5/17/2019, informing the Court as to whether the parties seek additional judicial action or request an entry of final judgment in this litigation. (dot) (Entered: 04/30/2019)
05/17/2019	<u>38</u>	Consent MOTION for Extension of Time to File <i>the Parties' Joint Status Report</i> by NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (Haynes, Fred) (Entered: 05/17/2019)
05/20/2019	<u>39</u>	Joint STATUS REPORT by ANIMAL WELFARE INSTITUTE. (Attachments: # <u>1</u> Text of Proposed Order)(Oliphant, Bradley) (Entered: 05/20/2019)
05/22/2019		MINUTE ORDER. The Court is in receipt of the parties' <u>39</u> Joint Status Report. The parties report that they require judicial action on one record related to the withheld draft memorandum. The Court ORDERS Defendant to file a supplemental brief of no more than 10 pages setting forth Defendants' rationale for withholding the record by JUNE 12, 2019. The Court further ORDERS Plaintiff to file its response brief of no more than 10 pages by JULY 10, 2019. The Court further DENIES AS MOOT the parties' <u>38</u> Consent Motion for a One-Business Day Extension of Time for the Parties to File their Joint Status Report as the Joint Status Report has now been filed. Signed by Judge Colleen Kollar-Kotelly on 5/22/2019. (lcckk3) (Entered: 05/22/2019)
05/22/2019		Set/Reset Deadlines: Defendants' Supplemental Brief due by 6/12/2019. Plaintiff's Response due by 7/10/2019. (dot) (Entered: 05/23/2019)
06/12/2019	<u>40</u>	SUPPLEMENTAL MEMORANDUM by NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION. (Haynes, Fred) Modified event title on 6/14/2019 (znmw). (Entered: 06/12/2019)
07/01/2019	<u>41</u>	NOTICE of Appearance by Patricia K. McBride on behalf of NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (McBride, Patricia) (Entered: 07/01/2019)

07/10/2019	<u>42</u>	RESPONSE re <u>40</u> Memorandum of National Marine Fisheries Service, National Oceanic and Atmospheric Administration filed by ANIMAL WELFARE INSTITUTE. (Attachments: # <u>1</u> Declaration of Donald C. Baur, # <u>2</u> Exhibit 1 to Declaration of Donald C. Baur, # <u>3</u> Exhibit 2 to Declaration of Donald C. Baur, # <u>4</u> Exhibit 3 to Declaration of Donald C. Baur, # <u>5</u> Exhibit 4 to Declaration of Donald C. Baur, # <u>6</u> Text of Proposed Order)(Oliphant, Bradley) (Entered: 07/10/2019)
07/29/2019		MINUTE ORDER. The Court finds that in camera review of the document relating to the parties' supplemental briefing is necessary to make a responsible de novo determination on the claims of exemption. See Larson v. Dept of State, 565 F.3d 857, 869–70 (D.C. Cir. 2009). The Court ORDERS Defendants to present the March 28, 2017 email from Plaintiff's FOIA request to the Court for in camera review. Defendants may furnish to the Court the email ex parte and under seal for in camera review, or Defendants may contact the Court suggesting another method of delivering the email for the Court's in camera review. Defendants are ORDERED to provide the Court with the email for in camera review by AUGUST 5, 2019.Signed by Judge Colleen Kollar-Kotelly on 7–29–2019. (lcckk3) (Entered: 07/29/2019)